

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

YISROEL GOTTFRIED,
An Individual,

Case No.: 0:24-cv-62124

Plaintiff,

v.

PANDA LOGISTICS USA, INC.,
A Corporation,

Defendant.

_____ /

COMPLAINT FOR DAMAGES AND DEMAND FOR RELIEF

Plaintiff, YISROEL GOTTFRIED, by and through the undersigned counsel, hereby files this Complaint for Damages and Demand for Relief (“Complaint”) against Defendant, PANDA LOGISTICS USA, INC., and alleges as follows:

NATURE OF THE ACTION

1. This is an action for unpaid wages and declaratory judgment pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., as amended (“FLSA”), state common law, and state statutory law.

PARTIES

2. Plaintiff YISROEL GOTTFRIED (“Plaintiff”) is an individual, over the age of 18, living in Broward County, and is otherwise *sui juris*.
3. Defendant PANDA LOGISTICS USA, INC. (“PANDA”), is a corporation organized under the laws of the state of California and otherwise *sui juris*. Defendant PANDA is authorized to do business, and currently doing business in, Broward County, Florida.

JURISDICTION AND VENUE

4. Jurisdiction of this action is conferred on this Court by 28 U.S.C. section 1331, 29 U.S.C. section 216(b), and 28 U.S.C. section 1337. This Court has subject matter jurisdiction pursuant to 29 U.S.C. sections 207 et seq.
5. The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. 1367(a) because Plaintiff's claims under Florida common law form the same case or controversy under Article III of the United States Constitution. Plaintiff's state law claims share all common operative facts with her federal law claims, and the parties are identical. Resolving all state and federal claims in a single action serves the interests of judicial economy, convenience, and fairness to the parties.
6. In addition, this Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1332 because there is complete diversity of citizenship between the Plaintiff and Defendant, and the amount in controversy exceeds \$75,000.00. Diversity of citizenship exists because Plaintiff is a citizen of Florida and Defendant is a citizen of California.
7. Venue lies within this district pursuant to 28 U.S.C section 1391 (b) because Plaintiff resides in this District, Defendant PANDA regularly transacts business in this District, and the unlawful employment practices alleged herein occurred in all, or substantial part, in this District.
8. All conditions precedent to bringing this action have occurred, been performed, or been excused.

GENERAL ALLEGATIONS

9. Plaintiff was employed by Defendant PANDA as a sales associate. Plaintiff is not currently in possession of a copy of the employment contract, but is of the reasonable belief that Defendant is in possession, custody and/or control of the contract.
10. As part of his employment contract with Defendant, Plaintiff was to receive a 30% sales commission on all sales. In addition, per the terms of said contract, Plaintiff was entitled to receive commission payments for up to twelve (12) months subsequent to the conclusion of his employment with Defendant.
11. Plaintiff tendered his resignation in January of 2024. At that time, Defendant provided Plaintiff with the correct commissions payment prior to the date of Plaintiff's resignation. However, subsequent thereto, Defendant failed to tender Plaintiff the correct commissions payment for submissions made for the last three quarters of 2023.
12. Since that time, Plaintiff has made multiple written demands for the remaining balance due and owing to Plaintiff for said commissions, which total exceeds \$75,000.00. Defendant has refused to tender the remaining payments due and owing to Plaintiff.

COUNT I

**Failure to Pay Minimum Wage in Violation of the Fair Labor Standards Act
as against PANDA LOGISTICS USA, INC. ("PANDA")**

13. Plaintiff repeats and re-alleges paragraphs 1 through 12 above, as though fully set forth herein.
14. At all times relevant hereto, Plaintiff was an employee within the meaning of 29 U.S.C section 203(e)(1) within the last three years, and thus, is entitled to the rights, protections, and benefits of the FLSA.

15. 29 U.S.C. §206(a)(1)(C), mandates that employers pay all employees engaged in commerce or in the produce of goods for commerce, minimum wages for their work in an amount set by federal law. 29 U.S.C. §218(a), provides that employers pay such minimum wages as established by state law, should it be higher than the federal minimum. During the relevant time period the federal minimum wage was \$7.25. Effective September 1, 2021, Florida's minimum wage was \$10.00.
16. Plaintiff was not paid wages due and owing per the terms and conditions of Plaintiff's employment contract with Defendant.
17. PANDA's willful and intentional failure to pay Plaintiff the minimum wage for all his hours worked in violation of the FLSA.
18. Because of PANDA's unlawful failure and refusal to pay Plaintiff minimum wages, Plaintiff is entitled, pursuant to §216(b) of the FLSA, 29 U.S.C. §216(b), to recover unpaid minimum wages, including interest and liquidated damages thereon, including reasonable attorney's fees and costs, in an amount to be shown according to proof at trial.
19. Plaintiff demands judgments against Defendant PANDA, a trial by jury on all issues so triable, and any other relief the Court deems just and proper.

COUNT II

Breach of Contract, as against PANDA LOGISTICS USA, INC. ("PANDA")

20. Plaintiff repeats and re-alleges paragraphs 1 through 12 above, as though fully set forth herein.

21. Plaintiff and Defendant PANDA entered into a valid and enforceable Contract (“Contract”) whereby Plaintiff would provide sales services to Defendant PANDA as a Sales Associate, in exchange for a base salary and sales commissions.
22. Plaintiff performed all of his obligations under the Contract and was qualified for the position he held.
23. Notwithstanding Plaintiff’s full performance under the Contract, Defendant materially breached the Contract by failing to pay Plaintiff a thirty percent (30%) commission on sales completed for the final three quarters of the year 2023.
24. As a direct result of the Defendant PANDA’s material breach, Plaintiff has suffered and will continue to suffer damages to be shown according to proof.
25. Plaintiff demands judgments against Defendant PANDA, a trial by jury on all issues so triable, and any other relief the Court deems just and proper.

COUNT III

Breach of the Covenant of Good Faith and Fair Dealing, as against PANDA LOGISTICS USA, INC. (“PANDA”)

26. Plaintiff repeats and re-alleges paragraphs 1 through 12 as though fully set forth herein.
27. Florida contract law recognizes the implied covenant of good faith and fair dealing in every contract.
28. The Contract between Plaintiff and Defendant PANDA contained an implied covenant of good faith and fair dealing, which required Defendant PANDA to perform the terms and conditions of the Contract fairly and in good faith and to refrain from doing any act that would deprive Plaintiff of any benefits under said Contract.

29. Plaintiff performed all conditions and obligations to be performed on her part in accordance with the Contract.
30. Defendant PANDA breached the implied covenant of good faith and fair dealing by improperly denying Plaintiff sales commission payments.
31. As a direct and proximate result of this breach by Defendant PANDA, Plaintiff has suffered and will continue to suffer damages.
32. Plaintiff demands judgments against Defendant PANDA, a trial by jury on all issues so triable, and any other relief the Court deems just and proper.

COUNT IV

Unjust Enrichment, as against PANDA LOGISTICS USA, INC. ("PANDA")

33. Plaintiff repeats and re-alleges paragraphs 1 through 12 above, as though fully set forth herein.
34. This count is being pled in the alternative to Plaintiff's claims for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing.
35. Plaintiff conferred a valuable benefit upon Defendant PANDA when Plaintiff provided sales services to Defendant PANDA's clients.
36. Defendant PANDA knowingly accepted and retained the benefit provided by Plaintiff yet failed to compensate Plaintiff for providing the benefit as promised.
37. Defendant PANDA continues to refuse to provide Plaintiff the fair and reasonable value for such benefit, i.e., Defendant PANDA refuses to pay Plaintiff for the work performed, as contracted.

38. Under the circumstances, it would be inequitable for Defendant PANDA to retain the benefit of Plaintiff's services without providing Plaintiff the full, reasonable value owed in return for same.

39. Plaintiff demands judgments against Defendant PANDA, a trial by jury on all issues so triable, and any other relief the Court deems just and proper.

COUNT V
Fraudulent Misrepresentation, as against PANDA LOGISTICS USA, INC.

40. Plaintiff repeats and re-alleges paragraphs 1 through 12 above, as though fully set forth herein.

41. This count is being pled in the alternative to Counts II, III and IV.

42. Defendant PANDA falsely and fraudulently induced Plaintiff into accepting employment with PANDA by making certain false representations and false promises to Plaintiff.

43. Specifically, Defendant PANDA promised Plaintiff, in writing, that he would be paid a (30%) commission on all sales secured, in addition to his base salary.

44. This representation that was made to Plaintiff was a statement of fact, which Plaintiff believed to be true, but which was in fact false. At the time the representations were made, Plaintiff was ignorant to the falsity of them and believed them to be true. Had Plaintiff known the actual facts, he would not have accepted employment with Defendant PANDA.

45. Plaintiff's reliance on Defendant PANDA's representation was justified because Defendant PANDA seemed to be a reputable business with a good reputation.

46. Defendant has a pattern and practice of not paying employees sales commissions that are due and owing. Through this practice, concealed from Plaintiff before he accepted

employment with Defendant PANDA, Defendant PANDA knew, or reasonably should have known, that its representations were false.

47. Plaintiff is informed, believes, and thereon alleges that Defendant PANDA's misrepresentations were intentional and deliberate.

48. As a result of said intentional misrepresentations, Plaintiff has suffered actual damages in lost wages, unpaid wages, and unpaid sales commissions, in an amount to be shown according to proof at trial.

49. As a further proximate result of Defendant PANDA's intentional misrepresentations, Plaintiff has suffered and continues to suffer Emotional Distress, ongoing sadness, anger, mental anguish, irritability, nervousness, anxiety, grief, sleeplessness, helplessness, hopelessness, and other damages, all to her detriment, in an amount to be shown according to proof.

50. Plaintiff demands judgment against Defendant PANDA, a trial by jury on all issues so triable, and any other relief the Court deems just and proper.

**PRAYER FOR RELIEF AS AGAINST
DEFENDANT PANDA LOGISTICS USA, INC. ("PANDA")**

WHEREFORE, Plaintiff prays judgment against Defendant PANDA as follows:

1. For a declaratory judgment that Defendant PANDA's practice violates the FLSA;
2. For compensatory damages for the first, third, fourth, and fifth causes of action;
3. For emotional distress damages for the fifth cause of action;
4. For an award of interest, including prejudgment interest, at the legal rate;
5. For costs and fees of suit herein incurred; and
6. For such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable.

DATED: November 7, 2024.

Respectfully submitted,
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